

REMARKS

This invention provides for, *inter alia*, liquid formulations comprising one or more compounds selected from the group of gemini surfactants and/or sulfosuccinates and one or more compounds which are inhibitors of acetolactate synthetase (ALS inhibitors) in dissolved form. The inventive formulations are stable to degradation and exhibit favorable performance properties.

Pursuant to the provisions of 37 C.F.R. §§ 1.17(a) and 1.136(a), Applicants petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Office Action by three (3) months, i.e., up to and including December 17, 2004. A check for \$1020.00 is enclosed with this paper. Applicants authorize the Director to charge any additional fee for consideration of this paper, or credit any overpayment, to Deposit Account No. 50-0320.

Applicants thank the Examiner for removing the rejections of claims 15, 17, 18, 20-25, 28, 30-32 under 35 U.S.C. §102 (e)/103(a).

Claims 15-18, 20-25 and 28-32 are pending.

Claims 15-18, 28,30-32 stand rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Nishi et al. (JP 11315004; "Nishi"); claims 15-18, 28, 30-32 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by Yausi et al. (JP 10330202; "Yasui"); claims 15-18, 28-32 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by Kadowaki, (JP 10182302; "Kadowaki"), and claims 15-18, 28-32 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by Hasegawa (JP 10182302 [sic], "Hasegawa"). These rejections will be addressed collectively and are respectfully traversed. Applicants urge that none of the cited references serve to teach the instant liquid herbicidal formulation wherein inhibitors of acetolactate synthetase are present in dissolved form.

The Office Action states that “Nishi teaches a composition comprising dialkyl sulfosuccinate salts and a poorly water soluble agrochemical. Nishi teaches dissolving the composition in water” (Office Action page 2). The Office Action further claims that both Yasue and Kadowaki teach an aqueous herbicide composition comprising dialkyl sulfosuccinate salts and an agrochemical for dissolving in water prior to application. Finally, the Office Action states that “Hasegawa teaches a pesticide tablet composition comprising ialkyl [sic] sulfosuccinate salts and an agrochemical (Imazosulfuron). Hasegawa teaches dissolving the tablet in water” (Office Action page 3).

Applicants respectfully point out that herbicidal compositions according to the cited references are either in the form of a solid formulation (Nishi and Hasegawa) or in the form of an aqueous formulation (Yasui and Kadowaki), and their application requires an extra step of dissolving in water which often leads to undissolved fractions in the concentrate and eventually results in application problems. In contrast, the present invention clearly teaches a liquid herbicidal formulation wherein the ALS inhibitor is in the dissolved form prior to application. In fact, the instant specification (page 2) teaches that use of herbicidal composition in solid formulation (granule or tablet) leads to considerable disadvantages during their preparation.

Applicants urge therefore that neither Nishi, Yasui, Kadowaki nor Hasegawa are properly cited as Section 102(b) references. A two-prong inquiry must be satisfied in order for a Section 102 rejection to stand. First, the prior art reference must contain **all** of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990). A reference contains an enabling disclosure if a person of ordinary skill in the art could have combined the description of the invention in the prior art reference

with his own knowledge of the art to have placed himself in possession of the invention. *See In re Donohue*, 226, U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicants urge that neither Nishi, Yasui, Kadowaki nor Hasegawa contains **all** the elements of the claimed invention as these references do not relate to liquid formulation of herbicidal components wherein the ALS is present in the dissolved form prior to use. Further, each of these references fail to contain an enabling disclosure such that one of skill in the art could have combined the reference teachings with his own knowledge, and thereby practice the instantly claimed liquid herbicidal composition. Thus, none of these references anticipates the present invention. Accordingly, Applicants urge that each of the rejections under 35 U.S.C. § 102(b) should be reconsidered and withdrawn.

Claims 20-25 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Nishi as applied to claims 15-18, 28, 30-32 above; claims 20-25 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Yasui as applied to claims 15-18, 28, 30-32 above; claims 20-25 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Kadowaki as applied to claims 15-18, 28, 30-32 above; and claims 20-25 and 29 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Hasegawa as applied to claims 15-18, 28, 30-32 above. These rejections will be addressed collectively and are respectfully traversed. Applicants urge that none of the cited references serve to teach, suggest or motivate a skilled artisan to practice the presently claimed invention.

As mentioned above, the present invention provides for *inter alia* inventive liquid formulations comprising an ALS inhibitor in the dissolved form. Applicants discovered that the inventive liquid formulations are surprisingly stable to degradation and have favorable performance properties (see, paragraph bridging pages 2 and 3, Examples I-XIV, Table 1, and

the comparative example, Table II). These Examples clearly shows that instant invention overcomes the problem of storage stability associated with liquid sulfonylurea formulations.

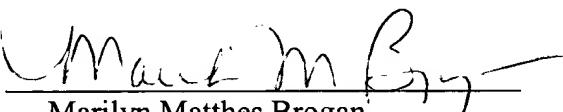
Applicants urge that none of the above references cited as a basis for the 35 U.S.C. § 103(a) rejection, establish a *prima facie* case of obviousness; these references do not teach, suggest to one skilled in the art, Applicants' liquid herbicidal formulation wherein an ALS inhibitor is in the dissolved form. Further, these substantives do not motivate one skilled in the art to modify the solid formulations of Nishi and Hasegawa and aqueous formulations of Kadowaki and Yausi to arrive at the instant liquid formulations with improved stability.

In order to further rebut any holding of alleged obviousness, Applicants respectfully point out that the data presented in the specification and the Examples clearly show that the instant invention achieves herbicidal liquid formulations having superior stability to degradation and favorable performance properties related to preparation and application. Thus, as the instant invention exhibits unexpected results and superiority over the art, Applicants urge that any holding of *prima facie* obviousness is clearly rebutted. The claimed liquid herbicidal compositions are, thus, unobvious. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) are respectfully requested.

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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